

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 1159 to 1162 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

BHUPESH L MEHTA

Versus

STATE OF GUJARAT

Appearance:

MR SAURIN A SHAH for Petitioners
MR Y.F.MEHTA,A.P.P. for Respondent No. 1
MR YS LAKHANI for Respondent No. 2
SERVED BY DS for Respondent No. 6

CORAM : MR.JUSTICE S.D.PANDIT

Date of decision: 02/11/96

COMMON ORAL JUDGEMENT

Rule.

All these four petitions are filed by one and same person under Section 482 of the Code of Criminal Procedure and under Article 226 of the Constitution of India for quashing the complaint lodged against them in

the court of Judicial Magistrate First Class, Jamnagar. No doubt, the respondent No.2 in all these four cases is not one and the same person, the respondent No.2 in all these petition is the original complainant, but the petitioner and the complainants i.e. respondent No.2 are represented in all the four petitions by one and the same advocate and in all these 4 petitions same questions of facts are involved and the complaints in all these cases are identical one and the same. Therefore, in the circumstances, I proceed to dispose of all these four petitions by this common judgment.

2. As I have heard the petitioner as well as the learned advocates for the respondents at length on merits, I proceed to dispose of all petitions finally by this judgment.

3. The respondent No.2 in Writ Petition No.1159 of 1996 is Anil. J. Sodha and his private complaint is bearing Criminal Case No.149/96. In Writ Petition No.1160 of 1996, respondent No.2 is Kapildev Bahal and his private complaint is bearing Criminal Case No.150/96. In Writ Petition No.1161 of 1996, respondent No.2 Gautam Mahendrabhai is the original complainant and his private complaint is bearing Criminal Case No.151 of 1996, whereas the respondent No.2 in Writ Petition No.1161 of 1996 is Premshankar Mishra and his private complaint is bearing No.151 of 1996. The present petitioners and the respondent No.6 in all the petitions namely Mr.Anil. B. Mehta are arrayed as accused Nos. 1 to 3. It is the case of the complainant in all the cases that the complainant had given 1,000/- shares worth Rs.50,000/-, 100/- shares worth Rs.5,000/-, 100/- shares worth Rs.5,000/- and 3,400/- shares worth Rs.50,150/respectively. The shares were given by the complainant to the accused No.1-respondent No.6 in these petitions for the purpose of sale. It is their further case that the accused No.1 Anil. B. Mehta had promised the complainant in each case that he would sell their shares through his wife's cousin brother-the present petitioner who are dealing as share broker at Bombay and that on account of such sale through the present petitioners, the complainants will be benefited. It is the further complaint of the complainant that though the accused No.1 had promised to pay the said amount of shares, the accused had not in fact paid the same in cash. The accused No.1 had issued cheque for some amount out of the price of the said shares, but the said cheques were also dishonoured for want of sufficient funds. It is further alleged by the complainant in each case that the complainant had direct talk with the present

petitioner on telephone at Bombay and there it was learnt on phone that there was acute shortage of money and that the complainant will have to wait for sometime. But inspite of waiting for sufficient time, no amount was paid to them, and, therefore, the complainant had lodged private complaint alleging that the present petitioner and accused No.1 had committed offences punishable under Sections 406 and 420 of I.P.C. After lodging of the said complaint in each complaint, the learned Judicial Magistrate was pleased to direct the police to hold investigation under Section 156 (3) of the Code of Criminal Procedure.

4. It is the case of the petitioner that on the lodging of the said complaint, though they had no transaction of whatsoever nature with the complainant, the police of Jamnagar came to Bombay and they forcibly compelled the petitioner No.1 to leave his house as well as to leave Bombay and he was brought to Jamnagar, there he was wrongly confined and some documents and some cheques were obtained forcibly from him, and, thereafter, he was produced before the learned Judicial Magistrate and then he got himself released on bail. It is further claim of the petitioner that the said arrest of petitioner No.1 was illegal and was in collusion with the original complainant and that the prosecution against them is the clear case of abuse of process and law, and, therefore, the same should be quashed. It is their claim that as a matter of fact, the original accused No.1-Anil B. Mehta has suffered heavily in his business as a share broker and he is heavily indebted and is not in a position to pay money not only to the complainant in all these four cases but to others also and the cheques issued by him are also dishonoured by the bank. But instead of taking proper proceeding against him alone as he happen to be related to the present petitioners and as the petitioners are financially sound, they are falsely robbed in this case in order to recover due from the original accused No.1-respondent No.6 Anil B. Mehta.

5. At this stage I am only considering the question as to whether the complaints in question are to be quashed against the present petitioners or not. The learned advocate also does not wish to press other claims made in the petition except the quashing of the prosecution against the present petitioners. When I am considering the question regarding the quashing of the prosecution by exercising the powers under Section 482 of Code of Criminal Procedure, I cannot weigh the evidence and I have to consider the complaint lodged by giving a

face value to the words used in the complaint and to consider as to whether any prudent person will believe the said averments and whether from the said averments it can be said that the prosecution in question is justified or not.

6. It must be mentioned here that in each complaint, it is alleged by the complainant that his shares were given and entrusted by the complainant to the original accused No.1-respondent No.6 Anil. B. Mehta. It is further alleged in each complaint that accused No.1respondent No.6 had represented to the complainant that he would sell the said shares through the present petitioners who were having very good business as a share broker. It is very pertinent to note that it is not the claim of any of the complainant that after the said promise was given by the accused No.1-respondent No.6, the complainant had contacted in all the petitions either on phone or personally before handing over of the shares to accused No.1.

7. Then as per the averments made in the complaint, after handing over the said shares, the accused No.1respondent No.6 had given a cheque towards the prices of the shares to the complainant. It is also very pertinent to note that it is not the claim of any of the complainant that the complainant had written any letter in writing or a notice in writing to any of these petitioners. It is also not the claim of any of the complainant that any of the petitioner had written any letter to any of the complainant on receiving the shares through the original accused No.1 belonging to the complainant. It is also very pertinent to note that it is also not averred by any of the complainant that the complainant had actually verified and found that the original accused No.1 - Anil B. Mehta had in fact transferred the shares received by him from the complainant to any of the petitioners.

8. Now in view of the above stated contents of the complaint, it would be quite clear that from the complaint of the complainant it is not possible to hold that there was entrustment by any of the complainant of any share to any of the petitioners. When from the averments by the complainant himself in his complaint it is not possible to hold that in fact there was entrustment by accepting the averments made in the complaint by giving the face value to the averments in the complaint. When there is no entrustment of the shares by any of the complainant to any of the petitioners, there is no question of any of the petitioner committing

any misappropriation or criminal breach of trust of the sale procedure of the shares or the shares belonging to the complainant.

9. It must be also further mentioned here that in the complaint, the complainant has quoted that the accused have committed the offences punishable under Sections 406 as well as 420 of I.P.C.. The offence punishable under Sections 406 and 420 of I.P.C. cannot go together. There can be either the commission of the offence punishable under Section 406 or Section 420. In case of offence punishable under Section 406 of I.P.C., there must be entrustment of the property by the complainant to the accused and in case of Section 420 of I.P.C., there must be delivery of the property or valuable security by the complainant to the accused on account of the false representation or inducement made by the accused to the complainant. In the instant case as per the case of the complainant, they wanted to sell their shares and for the purpose of sale only they had given the shares to the accused No.1. It is not the case of the complainant that the complainant was approached by the accused No.1 and he made certain representation and because of those representation, the complainant happened to deliver the shares to accused No.1. Thus, neither the accused No.1 nor accused Nos.2 and 3 i.e. the present petitioners could be prosecuted for both the offences punishable under Sections 406 and 420 of I.P.C. as has been tried by the complainant in these cases.

10. It is also quite obvious that the accused No.1-respondent No.6 Anil. B. Mehta had issued cheque and the cheque was presented by the complainant to his banker and the cheque has been dishonoured, but inspite of the said dishonour, no notice was issued to accused No.1 and no prosecution was taken against the accused No.1 under the provisions of Section 138 of the Negotiable Instruments Act. There is also no explanation in the complaint as to why the complainant had not taken recourse to the prosecution under Section 138 of Negotiable Instruments Act. That circumstance and the action of the complainant in joining present petitioners in prosecution makes the claim of the petitioner that they have been joined in this prosecution in order to have the recovery of the dues of the complainant seems to be more probable. The claim of the complainant in the complaint that the petitioner was contacted on phone and petitioner had said that there was shortage of money is not at all probable and believable and that claim could not be accepted by any prudent man in view of the peculiar circumstances prevailing in the prosecution in

question.

11. Thus, I hold that the prosecution of the present petitioners in all these 4 Criminal Cases namely Criminal Case No.149/96, 150/96, 151/96 and 152/96 on the file of learned Judicial Magistrate First Class, Jamnagar is a clear abuse of process and law and the said criminal proceedings as regards against the present petitioners will have to be quashed and set aside by exercising the powers under Section 482 of Code of Criminal Procedure.I, thus, allow all these four petitions and hereby order that the criminal prosecution of the present petitioners in Criminal Case No.149/96, 150/96, 151/96 and 152/96 is hereby quashed and set aside. The prosecution against the original accused No.1 in all those four cases will have to be continued. Thus, the rule is made absolute accordingly.

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